



<b><u>Decision Ref:</u></b>	2019-0087
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Car Finance
<b><u>Conduct(s) complained of:</u></b>	Arrears handling Level of contact or communications re. Arrears Refusal to grant consumer credit
<b><u>Outcome:</u></b>	Partially upheld

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

The complaint relates to missed repayments in respect of the Complainants' motor vehicle hire purchase agreement with the Bank and an alleged failure on the part of the Bank to notify the Complainants of same. The complaint also relates to negative credit reporting arising from the foregoing.

**The Complainants' Case**

The Complainants held a current account with the Bank. The Complainants also had a car hire purchase agreement with the Bank, the payments for which were deducted by way of direct debit on a monthly basis from the Complainants' current account. The Complainants state that, in 2015, owing to an insufficiency of funds in their account (certain contemporaneous correspondence suggests that there was, in fact, sufficient funds in the account), certain payments were not made in respect of the hire purchase agreement and the direct debit was cancelled. The Complainants maintain however that, notwithstanding these missed repayments, the Bank omitted to inform the Complainants of the position and that the matter only came to their attention when they were contacted by a car repossession company seeking to repossess the car. The Complainants maintain that the

Bank told them that several letters were sent to the Complainants' address notifying them of the position. The Complainants dispute ever receiving any such communications.

The Complainants maintain that, following the matter being brought to their attention, they contacted the Bank with which they concluded a "*verbal agreement*" as to the repayment of arrears. Notwithstanding this, and notwithstanding their assertion that they complied with their obligations pursuant to the verbal agreement, the Complainants state (in an email of 14 April 2018) that their "*credit rating has been greatly affected over a verbal agreement that nobody will admit they gave us*".

The Complainants state that, arising from the entirety of the foregoing, a negative credit rating was entered against them with the result that, upon application in 2017, the Complainants were denied a car loan. The Complainants maintain that this would never have arisen had they been promptly notified of the missed payments. The Complainants estimate that they have "*lost approximately 17,500 euro over this issue*" arising from the actions of the Bank.

The complaint is that the Bank failed to notify the Complainants of the missed direct debit payments on their account. The Complainant also relates to a verbal agreement reached between the Bank and the Complainants. The Complainants seek that their credit rating is restored.

### **The Provider's Case**

The Bank states that there were a number of missed direct debit repayments on the account from March 27<sup>th</sup> to September 1<sup>st</sup>, 2014 resulting in the accrual of €1,142 in arrears (In later correspondence the Bank clarified that the correct figure was €1,442). The Bank states that any payments which are in arrears for more than 30 days must be recorded in the relevant Irish Credit Bureau profile.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict.

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I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 25 February 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to set out a chronology of activity on the Complainants' current account and certain other relevant matters. I note that, with regard to the date on which any particular direct debit failed, the Complainants' current account recites the precise date of any rejected payment and, in some instances, a slightly later date is recorded on the Hire Purchase Agreement Statement of Account. Where relevant, I refer below to the date as per the Complainants' current account.

### Chronology

- |              |   |
|--------------|---|
| 16 July 2012 | Hire Purchase Loan Agreement executed stipulating 58 instalments of circa €390 (plus 2 further instalments) and anticipating an end date in September 2017  |
| 26 Aug 2013  | Fax from Complainants to Bank noting that " <i>due to lack of income in the last few months I am finding it hard to meet my monthly instalments</i> " and requesting reduction in monthly payments from €390 to €260. |
| 03 Sept 2013 | Direct Debit Payment missed. Letter issued to the Complainants according to the Bank. All payments prior to this point had been made. Balance in current account at this point was €46.25.                            |
| 11 Sept 2013 | Direct Debit Payment missed (2 <sup>nd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €33.55.   |
| 13 Sept 2013 | Letter from Bank confirming willingness to reduce repayments to €260 for 4 months as per Complainants' request. Letter required signature from Complainants.  |

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18 Sept 2013	Complainants sign Bank's letter of 13 Sept 2013 confirming agreement to reduced payments of €260 per month for 4 months covering months September – December 2013 inclusive.
30 Sept 2013	First payment of €260.
02 Oct 2013	Direct Debit Payment missed (€260). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €149.17.
10 Oct 2013	Direct Debit Payment missed (2 <sup>nd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €136.47. A lodgement of €390 on 10 Oct had not been cleared by the time of the presentation of the direct debit.
18 Oct 2013	€260 paid. It is unclear why the Hire Purchase Statement of Account records this payment as having been made by way of "manual" direct debit and on 15 October.
05 Nov 2013	Direct Debit Payment missed (€260). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €153.77.
12 Nov 2013	November payment (€260) successful. (€7,300 had been lodged to current account on 8 November.)
02 Dec 2013	December payment (€260) successful. Balance in the current account €2,485.42.
07 Jan 2014	Direct Debit Payment of full amount (payments had reverted to €388.40 at this point) missed. Letter issued to the Complainants according to the Bank. Balance in the current €383.63.
15 Jan 2014	Direct Debit Payment missed (2 <sup>nd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in the current account €370.93. A lodgement of €100 on 15 Jan had not been cleared by the time of the presentation of the direct debit.
03 Feb 2014	February payment (€388.40) successful. Balance after this payment was €64.83.

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- 12 Feb 2014 Second payment in this month of €388.40 made. (€395 had been lodged on 07 Feb.) Balance after this payment was €71.43. It is unclear why the Hire Purchase Statement of Account records this payment as having been made by way of “manual” direct debit and on 07 Feb.
- 05 Mar 2014 Direct Debit Payment missed. Letter issued to the Complainants according to the Bank. Balance in current account at this point was €11.43.
- 19 Mar 2014 Direct Debit Payment missed (2<sup>nd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €1.27 OD.
- 26 Mar 2014 Direct Debit Payment missed (3<sup>rd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €30.57 OD.
- 27 Mar 2014 This is the first of two significant anomalies in respect of the accounts provided by the Bank. The Hire Purchase Statement of Account records that a payment by way of direct debit in the amount of €388.40 was successfully paid on this date. There is no record of this payment being sought from or leaving the Complainants’ account (which had insufficient funds to meet the payment at the time). I will return to this below.
- 01 Apr 2014 Direct Debit Payment missed. Letter issued to the Complainants according to the Bank. Balance in current account at this point was €43.27 OD.
- 02 Apr 2014 Direct Debit Payment missed (2<sup>nd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €55.97 OD.
- 08 Apr 2014 Direct Debit Payment missed (3<sup>rd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €68.67 OD.
- 09 Apr 2014 Direct Debit Payment missed (4<sup>th</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €81.37 OD.

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- 15 Apr 2014 This is the second of the two anomalies referred to already. The Complainants' Statement of Account records an outgoing payment of €388.40 on this date. The detail of the record is different to all the other direct debit repayments to the Hire Purchase account. A lodgement of €500 is recorded on 10 April. The Hire Purchase Statement of Account however does not reflect any payment on this date or indeed at any point in this month. It may be that this mis-recording can be set-off as against the 27 March mis-recording however the inconsistencies are entirely unsatisfactory.
- 16 Apr 2014 Direct Debit Payment missed. Letter issued to the Complainants according to the Bank. Balance in current account at this point was €17.53.
- 16 Apr 2014 Fax from Complainants to Bank noting inability to meet monthly repayments and requesting reduction in monthly payments. [Copy of fax supplied by the Bank is incomplete insofar as part of the fax is not visible.]
- 06 May 2014 Direct Debit Payment missed. Letter issued to the Complainants according to the Bank. Balance in current account at this point was €4.83.
- 12 May 2014 Direct Debit Payment missed (2<sup>nd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €7.87 OD.
- 26 May 2014 Letter from Bank confirming "*payment arrangement*" for 4 months in the form of a reduction in repayments to €250 covering months May – August 2014 inclusive. Letter notes arrears are €776.80 and advises that "*any arrears on your account may affect your credit rating*". Unlike the 13 Sept 2013 letter, the 26 May 2014 letter did not require any signature from the Complainants and in fact expressly confirmed that the arrangement "*has been put in place*". This is relevant as the Bank's response to this Office states that the Complainants "*did not agree to this arrangement*".
- 03 June 2014 Direct Debit Payment missed. Letter issued to the Complainants according to the Bank. Balance in current account at this point was €129.43.

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10 June 2014	Direct Debit Payment missed (2 <sup>nd</sup> presentation). Letter issued to the Complainants according to the Bank. Balance in current account at this point was €116.73. This was the last direct debit presented.
August 2014	Bank passed the account to third party debt collection company and cancelled the direct debit. The Bank states that it did not notify the Complainants of this cancellation.
01 Sept 2014	€200 "cash" repayment made. This was the first repayment since the 15 April repayment or since the 27 March repayment, depending on which of the Bank's two mutually inconsistent documents one relies upon.
23 Sept 2014	€300 "cash" repayment made.
23 Oct 2014	€300 "cash" repayment made. A cash payment of €300 is made each month thereafter excluding December 2016 when no payment was made, January 2018 when €600 was paid to include the February payment, March 2018 when €500 was paid, and September 2018 when €600 was paid to rectify a missed payment in August 2018. The Bank states that it did not agree this arrangement to accept €300 per month with the Complainants but rather this arrangement was agreed between the Complainants and a third-party debt collection company.
15 Feb 2018	Letter from Bank noting that there were " <i>a number of missed direct debits from March 27<sup>th</sup> to September 1<sup>st</sup> 2014 and arrears of €1,142 accrued. We did not receive any proposal to clear the arrears during that time period. Please be advised that any payments which are in arrears for more than 30 days must be recorded on your ICB profile.</i> "
14 Mar 2018	Letter from Bank acknowledging an " <i>informal payment arrangement</i> " had been in place since August 2014.

### **Analysis**

The Complainants' complaint can essentially be divided into two parts. In the first instance they complain about a failure to notify them about certain missed direct debit payments. Secondly, they complain about negative reporting to the ICB as regards the accrual of arrears. There is a certain overlap between the two parts however I will consider them in turn.

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### Notification of Missed Direct Debits

There were 14 repayments made on the hire purchase agreement following its creation until the direct debit presented on 3 September 2013 failed as did a subsequent presentation on 11 September 2013. It was subsequent to these failed payments that the first agreement on reduced payments was signed by the Complainants covering the months September – December 2013 inclusive. Payment in the agreed reduced amount (€260) was then taken out on 30 September 2013 (covering September and in substitution for the two failed efforts to take payment in that month in the amount of €390). An effort was made to take a further €260 out on 1 October 2013 but this failed as did a repeat effort on 4 October 2013. However, a “*Manual Direct Deb*” was completed on 15 October 2013 in the amount of €260.

Thereafter, there was a failed direct debit presentation on 05 November 2013 which succeeded on 2<sup>nd</sup> presentation on 12 November. The December 2013 payment went through however in January 2014 (at which point repayments had reverted to the full amount), two efforts at presenting the direct debit failed. Two payments went through in February which covered the January missed payment. As such, by this point in time, the account was up to date albeit certain payments had been late.

In March 2014, the direct debit was presented and rejected on 3 occasions. The Hire Purchase Statement of Account records that a 4<sup>th</sup> attempt was successful on 27 March 2014 however this is not borne out by the current account statements which do not disclose any payment on 27 March 2014 or indeed at any point in March. This is the first anomaly referred to above.

According to the Hire Purchase Statement of Account, the April 2014 payment failed on 5 occasions however the Hire Purchase Statement of Account fails to reflect that a repayment was apparently made on 15 April 2014 as per the current account statements (which latter document additionally shows 5 rejections). This is the second anomaly referred to above. Whereas these two incongruencies may have cancelled each other out in terms of the overall balance of the Hire Purchase account, they have implications for the picture in terms of arrears, a matter to which I will return later.

It was from April 2014 that multiple arrears of missed payments began to accrue on the Hire Purchase account as, according to the Hire Purchase Statement of Account, the April 2014 payment was never made. The May 2014 repayment was presented twice and failed twice leading to arrears of €776.80 (2 payments). The June 2014 repayment was presented twice and failed twice leading to arrears of €1,165.20 (3 payments). These arrears had reached €1,442 by August 2014 (the Bank states that references in its correspondence to arrears of €1,142 were in error and that the figure which should have been cited was €1,442). The two presentations of the direct debit in June 2014 were the last such presentations as the direct debit was discontinued thereafter.

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With regard to each of the aforementioned failed direct debits, I have reviewed the Complainants' current account from which the direct debits were intended to have been paid. It is clear that, in respect of each of the failed direct debits, the reason for failure was an inadequacy of funds in the account to meet the payment. This is contrary to the statement made by the First-named Complainant in his email to the Bank of 10 April 2018 (underlining added):

*This all started in 2015 when the direct deposit payment for my car got messed up somehow and they stopped taking the payment out of the lodging account. The money was there, and we didn't realize the payments weren't being sent.*

In fact, by January 2015, the direct debit mandate had been discontinued for over 6 months. Arrears had begun to accrue on the hire purchase agreement since April 2014 as a result of 9 rejected direct debits beginning in April 2014 (and not including the 10 rejected direct debits prior to that point beginning in September 2013).

Insofar as the First-named Complainant may have intended to state that he was unaware that the 'payments weren't being sent' in the period January – June 2014, it is apparent that the balance in the current account had reduced to less than a repayment (less than €388) by January 2014. Shortly prior to two repayments in February 2014, lodgements were made on 15 January 2014 and 7 February 2014, each of which had the effect of increasing the balance to more than a repayment and meant that the two direct debits which were presented on 03 February and 07 February were paid. The subsequent failed direct debits were rejected because the money was *not* there.

This way of operating was similar to the manner in which the current account was operated previously. Immediately before each of the four repayments prior to the first failed direct debit in September 2013, the Complainants had been lodging about €400 to the account for the sole purpose of meeting the repayments. Prior to each such lodgement, the balance of the current stood at between €33 and €47 and each lodgement was made within 3 working days before the direct debit presented. The last lodgement, on 29 July 2013, was in the amount of €390.62 cents less than the direct debit payment which was presented 3 days later. The Complainants were aware that the current account had insufficient funds to meet the direct debits in September 2013 as the First-named Complainant sent a fax stating precisely that. It would appear that they were also aware of the position in January – June 2014, particularly given that certain lodgements were made solely to facilitate two direct debits.

On the basis of the activity described above, I accept that the Complainants were aware of the state of their current account and I cannot accept that they were unaware that there were insufficient funds in the account to meet the direct debits in the period January – June 2014. I might also note that the Bank's response to this office states as follows:

*"The Bank confirms it wrote to the Complainants each time a DD failed to make them aware their loan was not being operated in line with the terms and conditions of the Hire Purchased Agreement."*

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The Bank states that it *“does not keep a copy of the system letters that issue as they are automated letters”* and has provided samples instead. The Complainants’ dispute receiving any such correspondence however, regardless of this, and as discussed above, I accept that they were aware, or ought to have been aware, that the payments were not being made. In this regard, I might also note that the Bank has provided internal records/notes relating to a series of 7 phone calls from January – May 2014 which record that the arrears were discussed directly with the Complainants and which include the following entries:

15 January 2014:

*“CL CALLED. JAN’S DD IS IN PRESENTATION AT THE MOMENT. CL ADVISE THAT SHE WILL MAKE LODGEMENT TO C/A TO ALLOW DD TO GO THROUGH. CL ADV THAT SHE CANNOT MEET THE FULL REPAYMENTS OF EU388.40 P/MTH. LOOKING TO EXTEND ARRANGEMENT ON REDUCED RENTALS OF EU260 P/MTH. OVER HALF PAID.*

*CL DOES NOT WANT TO V/S OR SELL VEHICLE. ADV CL TO SEND IN PROPS OUTLINING FINANCIAL SITUATION & I&E. ADV CL THAT REDUCED RENTALS CANNOT BE GUARANTEED FOR A 2<sup>ND</sup> TIME, CL U/STOOD*

6 February 2014:

*“IC FROM [First-named Complainant] ADVISED JAN MISSED PAYMENT, HE WILL HAVE [Second-named Complainant] RING TO DISCUSS PYT”*

14 May 2014

*“RECD CALL FROM [Second-named Complainant].APOLOGISED FOR NOT CALLING ME BACK YEST SAID THEY ARE FINDING IT VERY HARD AT THE MOMENT & KNOWS SHE IS IN ARREARS AT MOMENT*

In the absence of recordings these words are of little value. It is disappointing that I have not been provided with recordings of these calls.

However, in a phone call 14 February 2018 for example (of which there is a recording), the First-named Complainant states as follows:

*“The whole thing is, we never received a letter, I never received a letter, I never received a phone call or anything until I got a letter or I got a phone call from [the debt collection company] saying that they were going to take the car 7 or 8 months, after 7 or 8 missed payments, I forget how many missed payments it was. But like if I had got a letter or if I had got a contact, it wouldn’t even have even got that far.”*

This is clearly at odds with the Bank’s record of the phone calls described above.

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The Issue of Arrears and Reporting

I accept that the Bank was entitled to make negative credit reports in the event that there were missed repayments on the Complainants' account. The terms and conditions of the Hire Purchase Agreement include the following provision which is set out in bold typeface in capitals in its own section on the final page of the agreement:

**IF YOU DO NOT MEET THE INSTALMENTS ON YOUR AGREEMENT, YOUR ACCOUNT WILL GO INTO ARREARS. THIS MAY EFFECT YOUR CREDIT RATING.**

The terms make no reference to a 30-day period of grace before any reporting will be made. I accept that, notwithstanding the somewhat vague nature of the quoted provision, and absent any modification to the terms communicated by the Bank, the foregoing would have entitled the Bank to make negative reports to the ICB upon the occurrence of any missed payment.

The Bank's letter of 15 February 2018 to the Complainants addressed the issue in the following terms:

*"There were a number of missed direct debits on the above contract from March 27<sup>th</sup> to September 1<sup>st</sup> 2014 and arrears of €1,142 accrued. We did not receive any proposal to clear the arrears during that time period. Please be advised of any payments which are in arrears for more than 30 days must be recorded on your ICB profile."*

I note that this is the first written reference to the 30-day period. This statement is not consistent with information provided at a later date by the Bank insofar as it implies that the start date of the negative reporting was March 2014. In response to a query raised by this Office as to the precise detail communicated to the ICB, the Bank stated as follows:

*"When the loan was taken out by the Complainants in July 2012, the Bank registered the loan on the "ICB" and each month thereafter all payments/missed payments on the loan were accurately reported to the "ICB". The Complainants went into arrears in September 2013 and since that date their "ICB" record has reflected this and the subsequent payments made to the loan.*

*The Complainants can apply to the "ICB" for an update of their credit record but as the loan has passed its original completion date of July 2017, the loan will continue to show arrears on the "ICB" until it is cleared in full."*

In the earlier letter, the Bank stated that arrears had begun to accrue from March 2014 and implied that this led to negative reporting to the ICB from that date. In the later response, the Bank indicated that the negative reporting dated back 7 months prior to that to September 2013. This inconsistency is most unsatisfactory.

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I might note the statements quoted immediately above are the only evidence I have been provided with addressing the precise details (especially the timing) of matters reported to the ICB. I have not been provided with a credit report from that entity and thus I can only operate on the basis of the Bank's most recent statement to the effect that negative reporting dated back to September 2013.

It is disappointing that the Bank has not provided the actual report to the ICB in its response to this complaint.

The letter of 15 February 2018 also implied that negative reporting would only be made in the event that payments were in arrears for more than 30 days and this same information was communicated in a phone call between the Complainant and the Bank of 14 February 2018. This would not seem to have been the case given that the Bank's confirmation that negative reporting dated back to September 2013 and given that payments were not outstanding for more than 30 days at this point in time.

I will return to this below as I am satisfied that the Bank is required to honour its commitment that it would not make negative reports to the ICB unless arrears were outstanding for more than 30 days.

The requirement to meet the instalments as per the Hire Purchase Agreement is subject to any modifications of the agreement agreed to by the Bank such as agreements to accept reduced repayments for any periods. Clearly no arrears should accrue in the event that an account holder is meeting reduced repayment obligations as agreed with the Bank. The entitlement to make negative reporting is also clearly dependent on accurate record keeping to which I will return later.

In this case there were three alleged discrete agreements to accept reduced repayments. The first, which is not disputed by the Bank, was a four-month period from September – December 2013 during which the Bank agreed to accept €260 per month. There were no arrears on the account prior to September 2013 and the agreement provided for no modification in respect any reporting to the ICB, either prospectively or retrospectively. The original payment of €390.62 was presented and rejected on 03 September 2013 (the Hire Purchase Statement of Account records a rejected payment on 05 September 2013) and again on 11 September 2013 (the Hire Purchase Statement of Account records a rejected payment on 13 September 2013). Thereafter, the agreement on the reduced amount was recorded on 18 September 2013 and the payment of the reduced amount was made on 30 September 2013.

The agreement to accept the reduced amount superseded the pre-existing obligation on the Complainants to pay the full amount however that agreement was not reached until after the original payment had already been missed. Accordingly, I must accept that, by reference to the terms of the agreement, the Bank was entitled to report the September missed payment to the ICB.

However, as noted above, I am satisfied that the Bank should have honoured its commitment that it would not make negative reports to the ICB unless arrears were outstanding for more than 30 days. Had the Bank operated a policy of not reporting missed payments unless these were in arrears for more than 30 days, then the September missed payment would not have given rise to any negative reporting in circumstances where the reduced amount was both agreed and paid within less than 30 days from the date the original full amount was due. I will return to this later.

The October 2013 reduced payment was missed twice thus entitling the Bank, by reference to the terms of the agreement, to report this to the ICB. Again however, had the Bank operated a policy of not reporting missed payments unless they were in arrears for more than 30 days, therefore the October missed payment should not have given rise to any negative reporting in circumstances where the payment was made within less than 30 days from the date it originally fell due. Similarly, in November 2013, the agreed payment was made within less than 30 days of it falling due having been rejected initially. The December 2013 payment was made as scheduled and no negative reporting should have issued in respect of this. It is noteworthy that by the end of 2013, there were no accumulated arrears on the account.

The Complainants missed two payments in January 2014, the earlier being on 7 January. Two payments, each of €388.40, were made on 3 February and 12 February respectively. As above, given that the January payment was eventually made within less than 30 days of it falling due, this should not have given rise to any reporting. The February 2014 payment (made on 12 February) was made as scheduled and no negative reporting should have issued in respect of this.

March 2014 is identified by the Bank in its letter of 15 February 2018 as the month when arrears began to accrue. There were 3 failed direct debits and I am satisfied that the Bank was entitled to record these with the ICB subject to certain conditions. The last payment on the account made by the Complainants prior to the first cash payment in September 2014 was either in March or in April 2014. Due to the anomaly identified above, it is not possible to state exactly when. In the event that the payment was made on 27 March, no negative reporting should have occurred in March (by reference to the Bank's commitment not to report unless arrears were outstanding for 30 days or more). If the payment was made on 15 April, then the Bank was entitled to record the missed March payment however no missed payment should have been recorded for April. Thereafter, there were multiple missed payments in May 2014 which entitled the Bank to make a negative report to the ICB.

The second alleged agreement in respect of reduced repayments was the subject of the Bank's letter of 26 May 2014. This letter referred to a four-month period from May – August 2014 during which the Bank agreed to accept €250 per month. The Bank disputes that this "offer" was accepted by the Complainants however I cannot agree with the Bank's characterisation of the letter as an offer. The letter states its "*wish to confirm that the following has been put in place*" and goes on set out the terms.

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The letter does not require the communication of any acceptance by the Complainants as the Bank's letter of 13 Sept 2013 did. Accordingly, I am going to treat the letter of 26 May 2014 as binding. The letter provided for no modification in respect any reporting to the ICB, either prospectively or retrospectively.

During the period from May – August 2014, arrears accrued in circumstances where no payments whatsoever were made in the months of May, June, July and August. The difficulty is that arrears accrued during this period on the basis of the full repayment amount rather than on the basis of the reduced figure of €260. Thus, whereas the Bank was entitled to report the missed payments to the ICB, the arrears were overstated on the Bank's records. I should note that this means there would have been no difference in terms of negative reporting to the ICB in this period even had the Bank employed the correct figures.

No direct debits were presented after June 2014, and all further repayments were made by way of cash or cheque or credit transfer. The Bank states that it transferred the account to a debt collection company in August 2014 and that this entity, as opposed to the Bank, reached an agreement with the Complainants with regard to monthly payments of €300.

The Complainants have provided no written evidence to dispute this but have alluded to a discussion they say they had "around 18 months" prior to February 2018 (as per the First-named Complainant's email of 8 February 2018) with an unnamed bank manager of a particular branch. The First-named Complainant states, in an email of 10 April 2018, that this bank manager agreed that:

*the payments would be stalled on the car, and the arrears that were with the debt collector would be paid off. When it was paid off, the payments would be restarted thru [the Bank] again. We knew this was going to add a year to the loan, but we were happy with the verbal agreement. What they did not tell us, was that choosing this route was going to affect our credit so negatively. As it turned out, the verbal agreement was never kept, and the full loan went to the Debt Collector. Of which I was never notified of this either.*

The Bank disputes this account, but I am not of the view that I need to determine the dispute in order to come to my decision on this matter. The written evidence before me includes a letter from the debt collection company to the First-named Complainant dated 20 August 2014 requesting payment of the entire balance of the account – "€16,376.29". Further correspondence from the debt collection from August 2016 includes a statement of account which makes clear that the repayments are addressing the entire liability.

More fundamentally, an agreement reached in or around mid to late 2016 (as per the Complainants' estimate) to suspend ongoing repayment obligations in favour of prioritising the clearing of arrears would not have had the effect of removing reporting obligations on the part of the Bank. Arrears stood at €3,952 by 1 September 2016 (these may have been overstated however there were certainly significant arrears accrued at this point).

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No agreement could have effected any change to the reporting that had already taken place when the verbal agreement was allegedly made. This reporting dated back to September 2013 and would have continued to the date of the alleged verbal agreement. Whilst it may have had an effect on future arrears and any reporting thereof, the agreement contended for by the Complainants could not have had the effect of preventing the negative reporting surrounding the missed repayments in January – June 2014, of which the alleged failure to notify them forms the bulk of the Complainants' complaint. It is also unclear how precisely the Complainants contend that this agreement was reached in or around 2 years after the debt collection company had already taken over the collection of the entire account, as clearly communicated in debt collection company's correspondence.

Ultimately, in the absence of the Bank expressly and demonstrably agreeing to the revised repayments, the Bank was entitled to operate the account pursuant to the pre-existing terms. These terms included an entitlement on the part of the Bank to report any failure on the part of the Complainants to meet the full repayments as per the terms of the agreement (subject to the observation of the 30-day grace period communicated by the Bank, as already discussed above).

The Complainants paid €500 in September 2014 in circumstances where no payments had been made since March or April 2014. Thereafter, from October 2014 onwards, €300 per month was consistently paid (excluding December 2016 when no payment was made). Each payment of €300 was however circa €88 less than the required repayment as per the agreement and thus arrears continued to accrue by circa €88 per month. Accordingly, as of September 2017 – the original anticipated end date of the Hire Purchase Agreement- arrears stood at €5,376.29. From October 2017 onwards, the arrears began to drop by €300 with each monthly payment of €300. These monthly payments were continued consistently except for January 2018 when €600 was paid to include the February payment, March 2018 when €500 was paid, and September 2018 when €600 was paid to rectify a missed payment in August 2018).

The only correspondence from the Bank relating to this matter is a letter of 14 March 2018 referring to the Bank's awareness of the "*informal payment arrangement*" (albeit without referencing the debt collection company) and further indicating that it was satisfied to keep accepting the €300 monthly payments until the balance was paid off. However, at this point, the original term of the agreement had long-since expired, and no further arrears had accrued since September 2017. The Bank's indication that it was happy to accept further payments until the balance was paid off does not in any way effect its entitlement to have reported failures to make full payments up until the expiry of the term of the agreement and, thereafter, up until the balance was cleared.

I accept that the Complainants were aware that the required payments were not being made from the account. I also accept that the Bank was, in principle, entitled to report missed/late payments to the ICB.

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However, I am not satisfied to absolve the Bank of all wrongdoing in this case, in particular by reference to poor record keeping, poor communication, and the failure to implement the 30-day grace period which the Complainants were assured was in place.

The Bank has failed to keep accurate and reliable records. In particular, the Bank has presented two irreconcilable documents in relation to payments either made or not made in March/April 2014 without providing any explanation for same. The correct position with regard to this matter clearly has implications for the accurate position regarding arrears.

Additionally, I am satisfied that the Bank has mischaracterised its letter of 26 May 2014 as a mere offer with the result that arrears for the period May – August 2014 were overstated by a total of circa €352. Though this latter failing would not have had any quantifiable effect on the Complainants' credit record (given that the payments were accurately recorded as missed), it is nonetheless unsatisfactory.

I am also of the view that the Bank's letter of 15 February 2018 (as well as the phone call on the previous day) provided a misleading picture to the Complainants insofar as it implied that no negative reporting would occur unless payments were in arrears for more than 30 days. Had such a policy been operated, the Complainants would not have been liable to suffer a negative credit report until, most likely, either March or April 2014.

It is perhaps relevant to note that, from the point of view of the Complainants, had the negative reporting begun in March or April 2014 (and not September 2013), the Complainants would still have been met with the difficulties they subsequently encountered in securing credit in circumstances where they still would have suffered negative reporting in respect of multiple months.

The letter of 15 February 2018 was also misleading insofar as it stated that any reporting which had in fact occurred related to arrears accrued between March 27<sup>th</sup> and September 1<sup>st</sup> 2014, as opposed to arrears dating back to September 2013 as subsequently confirmed by the Bank.

I am satisfied that the foregoing matters warrant significant compensation in favour of the Complainants.

I also direct the Bank to conduct an audit of Hire Purchase Account (including a recalculation of the correct arrears throughout the duration of the agreement) and of the precise negative reporting it communicated to the ICB. This audit should deal with the anomaly regarding the March/April payment(s) and it should take cognisance of the various findings in this decision, in particular the following:

- Negative reporting should only have occurred where payments were outstanding for 30 days or more;
- In respect of the period September to December 2013, the required repayments should be considered to have been reduced to €260;

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- The letter of the 26 May 2014 should be deemed binding such that the required repayment due for each of the months May, June, July and August should be considered to have been reduced to €260.

Insofar as the directed audit uncovers evidence of negative reporting that should not, in fact, have occurred, I direct the Bank to take the appropriate action to have the ICB record corrected. In any event, I direct the Bank to write to the Complainants at the conclusion of the process outlining the findings of the audit and any steps taken arising from same.

For the reasons outlined above, I partially uphold this complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b) and (e)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by making a compensatory payment to the Complainants in the sum of €2,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider and by undertaking the audit identified above and carrying out any actions necessary arising from that audit, as identified above.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 March 2019

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

